

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

JOSHUA SITZER AND AMY)
WINGER, SCOTT AND RHONDA)
BURNETT, AND RYAN)
HEDRICKSON, on behalf of)
themselves and all others similarly situated,)
Plaintiffs,)
v.)
THE NATIONAL ASSOCIATION OF)
REALTORS, REALOGY HOLDINGS)
CORP., HOMESERVICES OF AMERICA,)
INC., BHH AFFILIATIES, LLC, HSF)
AFFILIATES, LLC, THE LONG &)
FOSTER COMPANIES, INC., RE/MAX,)
LLC, and KELLER WILLIAMS REALTY,)
INC.,)
Defendants.)

No: 4:19-cv-00332-SRB
Judge Stephen R. Bough

DEFENDANT RE/MAX, LLC'S RULE 26(A)(1) DISCLOSURES

Pursuant to Fed. R. Civ. P. 26(a)(1), Defendant RE/MAX, LLC (“RMLLC”) makes the following disclosures to all parties. RMLLC provides these disclosures subject to and without waiving any applicable privilege, doctrine, or right, including the attorney-client privilege, the work product doctrine, and all other rights and privileges recognized under the laws of the United States, the State of Missouri, and all relevant jurisdictions. By making these disclosures, RMLLC does not concede the relevance or admissibility of any particular information, nor does it waive any objection to any discovery request that any party may serve in the course of this litigation. RMLLC makes these disclosures based on information currently and reasonably available to it. RMLLC reserves the right to supplement, amend, or correct this information in accordance with

Fed. R. Civ. P. 26(e) and to present additional evidence to support its claims and defenses with any filing or during any proceeding in this action, including trial.

A. Individuals Likely to Have Discoverable Information

RMLLC discloses the following individuals that are likely to have discoverable information that RMLLC may use to support its claims and defenses in this case. Employees of RMLLC and RE/MAX Holdings, Inc. may be contacted through RMLLC's counsel, Jones Day, 77 West Wacker Drive, Chicago, Illinois, 60601, 312-782-3939. By identifying these individuals, RMLLC does not consent to or authorize any communications by Plaintiffs' counsel with any employee of RMLLC or any other individual or entity represented by counsel for RMLLC, and does not consent to or authorize any communications otherwise prohibited by all applicable rules of professional conduct.

1. Joshua Sitzer, Plaintiff

Mr. Sitzer has knowledge of the allegations and claimed damages set forth in the First Amended Class Action Complaint (the "Complaint"). Mr. Sitzer may be contacted through Plaintiffs' counsel.

2. Amy Winger, Plaintiff

Ms. Winger has knowledge of the allegations and claimed damages set forth in the Complaint. Ms. Winger may be contacted through Plaintiffs' counsel.

3. Scott Burnett, Plaintiff

Mr. Burnett has knowledge of the allegations and claimed damages set forth in the Complaint. Mr. Burnett may be contacted through Plaintiffs' counsel.

4. Rhonda Burnett, Plaintiff

Ms. Burnett has knowledge of the allegations and claimed damages set forth in the Complaint. Ms. Burnett may be contacted through Plaintiff's counsel.

5. Ryan Hedrickson, Plaintiff

Mr. Hedrickson has knowledge of the allegations and claimed damages set forth in the Complaint. Mr. Hedrickson may be contacted through Plaintiffs' counsel.

6. **All professionals, including real estate professionals, attorneys, and all others, who assisted any Plaintiff with any real estate transaction**
These individuals may have knowledge about each Plaintiff's real estate transactions and any negotiations with the Plaintiff and/or with the buyer of Plaintiff's real estate. Contact information for such individuals is unknown at this time.
7. **Representatives of the Heartland MLS**
These individuals may have knowledge of the Heartland MLS's adoption and implementation, if any, of the rules in NAR's Handbook on Multiple Listing Policy ("Handbook"), NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.
8. **Representatives of the Mid America Regional Information System ("MARIS") MLS**
These individuals may have knowledge of the MARIS MLS's adoption and implementation, if any, of the rules in NAR's Handbook, NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.
9. **Representatives of the Southern Missouri Regional MLS**
These individuals may have knowledge of the Southern Missouri Regional MLS's adoption and implementation, if any, of the rules in NAR's Handbook, NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.
10. **Representatives of the Columbia Board of Realtors MLS**
These individuals may have knowledge of the Columbia Board of Realtors MLS's adoption and implementation, if any, of the rules in NAR's Handbook, NAR's Code of Ethics, and NAR's Standards of Practice, and the use of its MLS for disclosure of commissions. Contact information for such individuals is unknown at this time.
11. **Representatives of real estate associations operating in the Subject MLSs**
These individuals may have knowledge regarding the adoption, implementation, and enforcement, if any, of the rule Plaintiffs refer to as the "Adversary Commission Rule," and operation of the local MLS. Contact information for such individuals is unknown at this time.
12. **Representatives of the National Association of REALTORS® (NAR)**
These individuals may have knowledge of NAR's Handbook, NAR's Code of Ethics, and NAR's Standards of Practice; the adoption and history of the rule referred to by Plaintiffs as the "Adversary Commission Rule"; the 2015 report referenced in ¶ 14 of the Complaint; availability of MLS data to third-party websites and consumers, as referred to in ¶ 103 of the Complaint; and the extent

of RMLLC's involvement with NAR. Such representatives may be contacted through NAR's counsel.

13. **Representatives of all Defendants**

These individuals may have knowledge of the absence of any agreement among Defendants regarding the rule Plaintiffs refer to as the "Adversary Commission Rule." Such representatives may be contacted through each Defendant's respective counsel.

14. **Dave Liniger**, Chairman of the Board & Co-Founder, *RE/MAX Holdings, Inc.* Mr. Liniger may have knowledge of the extent of RMLLC's involvement with NAR; the absence of any agreement among Defendants, alleged co-conspirators, or anyone else regarding the rule Plaintiffs refer to as the "Adversary Commission Rule"; RMLLC's corporate structure; and RMLLC's business.
15. **Adam Contos**, *Chief Executive Officer, RE/MAX Holdings, Inc.* Mr. Contos may have knowledge of the extent of RMLLC's involvement with NAR; the absence of any agreement among Defendants, alleged co-conspirators, or anyone else regarding the rule Plaintiffs refer to as the "Adversary Commission Rule"; RMLLC's corporate structure; RMLLC's business; and RMLLC's relationship with franchisees.
16. **Serene Smith**, *Chief Operating Officer, RE/MAX Holdings, Inc.* Ms. Smith may have knowledge of the extent of RE/MAX's involvement with NAR; the absence of any agreement among Defendants, alleged co-conspirators, or anyone else regarding the rule Plaintiffs refer to as the "Adversary Commission Rule"; RMLLC's corporate structure; RMLLC's business; and RMLLC's relationship with franchisees.
17. **Nick Bailey**, *Chief Customer Officer, RE/MAX Holdings, Inc.* Mr. Bailey may have knowledge of RMLLC's relationship with franchisees; the extent of RMLLC's involvement with NAR; the absence of any agreement among Defendants, alleged co-conspirators, or anyone else regarding the rule Plaintiffs refer to as the "Adversary Commission Rule"; RMLLC's corporate structure; and RMLLC's business.
18. **Amy Somerville**, *Senior Vice President, Professional Development & Engagement, RMLLC* Ms. Somerville may have knowledge of RMLLC's relationship with franchisees; the extent of RE/MAX's involvement with NAR; the absence of any agreement among Defendants, alleged co-conspirators, or anyone else regarding the rule Plaintiffs refer to as the "Adversary Commission Rule"; RMLLC's corporate structure; and RMLLC's business.
19. **Genevieve Lawrence**, *Director, Business Data Analytics, RMLLC* Ms. Lawrence has knowledge of RMLLC's information systems and available data.

20. Any witness identified by any other party

These individuals may have knowledge of the allegations and claimed damages set forth in the Complaint; the lack of any agreement among Defendants regarding the rule Plaintiffs refer to as the “Adversary Commission Rule”; and defenses to the Complaint.

In addition to the individuals listed above, RMLLC may rely upon one or more additional individuals that are identified by the parties during the course of discovery, as well as expert witnesses to be identified in accordance with any scheduling orders, to support RMLLC’s claims and defenses. RMLLC will also rely on any additional witnesses necessary for impeachment or rebuttal.

B. Documents, Electronically Stored Information, and Tangible Things RMLLC May Use to Support Its Claims and Defenses

Based on information currently and reasonably available, RMLLC identifies the following categories of non-privileged documents, electronically stored information, and tangible things within RMLLC’s possession, custody, or control that it may use to support its claims and defenses, other than solely for impeachment.

1. Agreements between RMLLC and its franchisees or sub-franchisors, and agreements between RMLLC’s sub-franchisors and their franchisees, believed to be operating within the Subject MLSs.
2. Franchise Disclosure Documents for the geographic areas believed to be covered by the Subject MLSs.
3. Manuals, policies, and guidelines that RMLLC franchisees believed to be operating in the Subject MLSs are required to follow.
4. Mandatory training materials provided by RMLLC to its franchisees believed to be operating within the Subject MLSs.
5. Communications regarding RMLLC’s relationship with those franchisees or sub-franchisors that are related to the claims or defenses in the litigation.
6. Communications among RMLLC employees, if any, relevant to the claims and defenses in the litigation regarding NAR, NAR rules, RMLLC’s lack of control over franchisees and sub-franchisors, and other allegations of the Complaint.

7. Internal reports and assessments regarding the real estate industry, including methods for selling homes, the home sale and purchase process, and compensation for real estate services.
8. Third party reports and assessments regarding the real estate industry, including methods for selling homes, the home sale and purchase process, and compensation for real estate services.
9. The data RMLLC receives from franchisees relevant to the allegations of the Complaint.

C. Computation of Damages

RMLLC does not allege any damages at this time but reserves the right to do so, as well as seek the right to seek any costs or attorneys' fees incurred in connection with its defense of this action. Further, RMLLC denies liability to Plaintiffs for any damages.

D. Applicable Insurance Agreements

Based on RMLLC's present insurance and applicable deductibles, no insurance carrier would be liable to satisfy part or all of any likely judgment that may be entered in this action, or to indemnify or reimburse for payments made to satisfy any likely judgment.

Dated: September 20, 2019

Respectfully submitted,

/s/ Paula W. Render

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I served Defendant RE/MAX, LLC's Rule 26(a)(1) Disclosures on the following counsel of record via U.S. Mail, postage prepaid and email:

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